

105TH CONGRESS
2D SESSION

H. R. 3318

To amend title 49, United States Code, to improve the one-call notification process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1998

Mr. BAKER (for himself and Mr. PALLONE) introduced the following bill;
which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend title 49, United States Code, to improve the one-call notification process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive One-
5 Call Notification Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) unintentional damage to underground facili-
9 ties during excavation is a significant cause of dis-
10 ruptions in telecommunications, water supply, elec-

1 tric power and other vital public services, such as
 2 hospital and air traffic control operations, and is a
 3 leading cause of natural gas and hazardous liquid
 4 pipeline accidents;

5 (2) excavation that is performed without prior
 6 notification to an underground facility operator or
 7 with inaccurate marking of such a facility prior to
 8 excavation can cause damage that results in fatali-
 9 ties, serious injuries, harm to the environment and
 10 disruption of vital services to the public; and

11 (3) protection of the public and the environ-
 12 ment from the consequences of underground facility
 13 damage caused by excavations will be enhanced by
 14 a coordinated national effort to improve one-call no-
 15 tification programs in each State and the effective-
 16 ness and efficiency of one-call notification systems
 17 that operate under such programs.

18 **SEC. 3. ESTABLISHMENT OF ONE-CALL PROGRAM.**

19 (a) IN GENERAL.—Subtitle III of title 49, United
 20 States Code, is amended by adding at the end thereof the
 21 following:

“CHAPTER 61—ONE-CALL NOTIFICATION PROGRAM

“Sec.

“6101. Purposes.

“6102. Definitions.

“6103. Minimum standards for State one-call notification programs.

“6104. Compliance with minimum standards.

“6105. Review of one-call system best practices.

“6106. Grants to States.

“6107. Authorization of appropriations.

1 **“§ 6101. Purposes**

2 “The purposes of this chapter are—

3 “(1) to enhance public safety;

4 “(2) to protect the environment;

5 “(3) to minimize risks to excavators; and

6 “(4) to prevent disruption of vital public
7 services,

8 by reducing the incidence of damage to underground facili-
9 ties during excavation through the adoption and efficient
10 implementation by all States of State one-call notification
11 programs that meet the minimum standards set forth
12 under section 6103.

13 **“§ 6102. Definitions**

14 “For purposes of this chapter—

15 “(1) ONE-CALL NOTIFICATION SYSTEM.—The
16 term “one-call notification system” means a system
17 operated by an organization that has as one of its
18 purposes to receive notification from excavators of
19 intended excavation in a specified area in order to
20 disseminate such notification to underground facility
21 operators that are members of the system so that
22 such operators can locate and mark their facilities in
23 order to prevent damage to underground facilities in
24 the course of such excavation.

25 “(2) STATE ONE-CALL NOTIFICATION PRO-
26 GRAM.—The term “State one-call notification pro-

1 gram” means the State statutes, regulations, orders,
 2 judicial decisions, and other elements of law and pol-
 3 icy in effect in a State that establish the require-
 4 ments for the operation of one-call notification sys-
 5 tems in such State.

6 “(3) STATE.—The term ‘State’ means a State,
 7 the District of Columbia, and Puerto Rico.

8 “(4) SECRETARY.—The term ‘Secretary’ means
 9 the Secretary of Transportation.

10 **“§ 6103. Minimum standards for State one-call notifi-**
 11 **cation programs**

12 “(a) MINIMUM STANDARDS.—A State one-call notifi-
 13 cation program shall, at a minimum, provide for—

14 “(1) appropriate participation by all under-
 15 ground facility operators;

16 “(2) appropriate participation by all excavators;
 17 and

18 “(3) flexible and effective enforcement under
 19 State law with respect to participation in, and use
 20 of, one-call notification systems.

21 “(b) APPROPRIATE PARTICIPATION.—In determining
 22 the appropriate extent of participation required for types
 23 of underground facilities or excavators under subsection
 24 (a), a State shall assess, rank, and take into consideration

1 the risks to the public safety, the environment, excavators,
2 and vital public services associated with

3 “(1) damage to types of underground facilities;
4 and

5 “(2) activities of types of excavators.

6 “(c) IMPLEMENTATION.—A State one-call notifica-
7 tion program also shall, at a minimum, provide for—

8 “(1) consideration of the ranking of risks under
9 subsection (b) in the enforcement of its provisions;

10 “(2) a reasonable relationship between the ben-
11 efits of one-call notification and the cost of imple-
12 menting and complying with the requirements of the
13 State one-call notification program; and

14 “(3) voluntary participation where the State de-
15 termines that a type of underground facility or an
16 activity of a type of excavator poses a de minimis
17 risk to public safety or the environment.

18 “(d) PENALTIES.—To the extent the State deter-
19 mines appropriate and necessary to achieve the purposes
20 of this chapter, a State one-call notification program shall,
21 at a minimum, provide for

22 “(1) administrative or civil penalties commensu-
23 rate with the seriousness of a violation by an exca-
24 vator or facility owner of a State one-call notification
25 program;

1 “(2) increased penalties for parties that repeat-
2 edly damage underground facilities because they fail
3 to use one-call notification systems or for parties
4 that repeatedly fail to provide timely and accurate
5 marking after the required call has been made to a
6 one-call notification system;

7 “(3) reduced or waived penalties for a violation
8 of a requirement of a State one-call notification pro-
9 gram that results in, or could result in, damage that
10 is promptly reported by the violator;

11 “(4) equitable relief; and

12 “(5) citation of violations.

13 **“§ 6104. Compliance with minimum standards**

14 “(a) REQUIREMENT.—In order to qualify for a grant
15 under section 6106, each State shall, within 2 years after
16 the date of the enactment of the Comprehensive One-Call
17 Notification Act of 1998, submit to the Secretary a grant
18 application under subsection (b).

19 “(b) APPLICATION.—

20 “(1) Upon application by a State, the Secretary
21 shall review that State’s one-call notification pro-
22 gram, including the provisions for implementation of
23 the program and the record of compliance and en-
24 forcement under the program.

1 “(2) Based on the review under paragraph (1),
2 the Secretary shall determine whether the State’s
3 one-call notification program meets the minimum
4 standards for such a program set forth in section
5 6103 in order to qualify for a grant under section
6 6106.

7 “(3) In order to expedite compliance under this
8 section, the Secretary may consult with the State as
9 to whether an existing State one-call notification
10 program, a specific modification thereof, or a pro-
11 posed State program would result in a positive de-
12 termination under paragraph (2).

13 “(4) The Secretary shall prescribe the form of,
14 and manner of filing, an application under this sec-
15 tion that shall provide sufficient information about a
16 State’s one-call notification program for the Sec-
17 retary to evaluate its overall effectiveness. Such in-
18 formation may include the nature and reasons for
19 exceptions from required participation, the types of
20 enforcement available, and such other information as
21 the Secretary deems necessary.

22 “(5) The application of a State under para-
23 graph (1) and the record of actions of the Secretary
24 under this section shall be available to the public.

1 “(c) ALTERNATIVE PROGRAM.—A State may main-
2 tain an alternative one-call notification program if that
3 program provides protection for public safety, the environ-
4 ment, or excavators that is equivalent to, or greater than,
5 protection under a program that meets the minimum
6 standards set forth in section 6103.

7 “(d) REPORT.—Within 3 years after the date of the
8 enactment of the Comprehensive One-Call Notification Act
9 of 1998, the Secretary shall begin to include the following
10 information in reports submitted under section 60124 of
11 this title—

12 “(1) a description of the extent to which each
13 State has adopted and implemented the minimum
14 Federal standards under section 6103 or maintains
15 an alternative program under subsection (c);

16 “(2) an analysis by the Secretary of the overall
17 effectiveness of the State’s one-call notification pro-
18 gram and the one-call notification systems operating
19 under such program in achieving the purposes of
20 this chapter;

21 “(3) the impact of the State’s decisions on the
22 extent of required participation in one-call notifica-
23 tion systems on prevention of damage to under-
24 ground facilities; and

1 “(4) areas where improvements are needed in
2 one-call notification systems in operation in the
3 State.

4 The report shall also include any recommendations the
5 Secretary determines appropriate. If the Secretary deter-
6 mines that the purposes of this chapter have been substan-
7 tially achieved, no further report under this section shall
8 be required.

9 **“§ 6105. Review of one-call system best practices**

10 “(a) STUDY OF EXISTING ONE-CALL SYSTEMS.—Ex-
11 cept as provided in subsection (d), the Secretary, in con-
12 sultation with other appropriate Federal agencies, State
13 agencies, one-call notification system operators, under-
14 ground facility operators, excavators, and other interested
15 parties, shall undertake a study of damage prevention
16 practices associated with existing one-call notification sys-
17 tems.

18 “(b) PURPOSE OF STUDY OF DAMAGE PREVENTION
19 PRACTICES.—The purpose of the study is to assemble in-
20 formation in order to determine which existing one-call no-
21 tification systems practices appear to be the most effective
22 in preventing damage to underground facilities and in pro-
23 tecting the public, the environment, excavators, and public
24 service disruption. As part of the study, the Secretary
25 shall at a minimum consider—

1 “(1) the methods used by one-call notification
2 systems and others to encourage participation by ex-
3 cavators and owners of underground facilities;

4 “(2) the methods by which one-call notification
5 systems promote awareness of their programs, in-
6 cluding use of public service announcements and
7 educational materials and programs;

8 “(3) the methods by which one-call notification
9 systems receive and distribute information from ex-
10 cavators and underground facility owners;

11 “(4) the use of any performance and service
12 standards to verify the effectiveness of a one-call no-
13 tification system;

14 “(5) the effectiveness and accuracy of mapping
15 used by one-call notification systems;

16 “(6) the relationship between one-call notifica-
17 tion systems and preventing intentional damage to
18 underground facilities;

19 “(7) how one-call notification systems address
20 the need for rapid response to situations where the
21 need to excavate is urgent;

22 “(8) the extent to which accidents occur due to
23 errors in marking of underground facilities, untimely
24 marking or errors in the excavation process after a

1 one-call notification system has been notified of an
2 excavation;

3 “(9) the extent to which personnel engaged in
4 marking underground facilities may be endangered;

5 “(10) the characteristics of damage prevention
6 programs the Secretary believes could be relevant to
7 the effectiveness of State one-call notification pro-
8 grams; and

9 “(11) the effectiveness of penalties and enforce-
10 ment activities under State one-call notification pro-
11 grams in obtaining compliance with program re-
12 quirements.

13 “(c) REPORT.—Within 1 year after the date of the
14 enactment of the Comprehensive One-Call Notification Act
15 of 1998, the Secretary shall publish a report identifying
16 those practices of one-call notification systems that are the
17 most and least successful in—

18 “(1) preventing damage to underground facili-
19 ties; and

20 “(2) providing effective and efficient service to
21 excavators and underground facility operators.

22 The Secretary shall encourage States and operators of
23 one-call notification programs to adopt and implement the
24 most successful practices identified in the report.

1 “(d) SECRETARIAL DISCRETION.—Prior to undertak-
2 ing the study described in subsection (a), the Secretary
3 shall determine whether timely information described in
4 subsection (b) is readily available. If the Secretary deter-
5 mines that such information is readily available, the Sec-
6 retary is not required to carry out the study.

7 **“§ 6106. Grants to States**

8 “(a) IN GENERAL.—The Secretary may make a grant
9 of financial assistance to a State that qualifies under sec-
10 tion 6104(b) to assist in improving—

11 “(1) the overall quality and effectiveness of one-
12 call notification systems in the State;

13 “(2) communications systems linking one-call
14 notification systems;

15 “(3) location capabilities, including training
16 personnel and developing and using location tech-
17 nology;

18 “(4) record retention and recording capabilities
19 for one-call notification systems;

20 “(5) public information and education;

21 “(6) participation in one-call notification sys-
22 tems; or

23 “(7) compliance and enforcement under the
24 State one-call notification program.

1 “(b) STATE ACTION TAKEN INTO ACCOUNT.—In
2 making grants under this section the Secretary shall take
3 into consideration the commitment of each State to im-
4 proving its State one-call notification program, including
5 legislative and regulatory actions taken by the State after
6 the date of enactment of the Comprehensive One-Call No-
7 tification Act of 1998.

8 “(c) FUNDING FOR ONE-CALL NOTIFICATION SYS-
9 TEMS.—A State may provide funds received under this
10 section directly to any one-call notification system in such
11 State that substantially adopts the best practices identi-
12 fied under section 6105.

13 **“§ 6107. Authorization of appropriations**

14 “(a) FOR GRANTS TO STATES.—There are author-
15 ized to be appropriated to the Secretary for fiscal year
16 2000 no more than \$1,000,000 and for fiscal year 2001
17 no more than \$5,000,000, to be available until expended,
18 to provide grants to States under section 6106.

19 “(b) FOR ADMINISTRATION.—There are authorized
20 to be appropriated to the Secretary such sums as may be
21 necessary for fiscal years 1999, 2000, and 2001 to carry
22 out sections 6103, 6104, and 6105.

23 “(c) GENERAL REVENUE FUNDING.—Any sums ap-
24 propriated under this section shall be derived from general

1 revenues and may not be derived from amounts collected
2 under section 60301 of this title.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The analysis of chapters for subtitle III of
5 title 49, United States Code, is amended by adding
6 at the end thereof the following:

“CHAPTER 61—ONE-CALL NOTIFICATION PROGRAM”.

7 (2) Chapter 601 of title 49, United States
8 Code, is amended—

9 (A) by striking “sections 60114 and” in
10 section 60105(a) of that chapter and inserting
11 “section”;

12 (B) by striking section 60114 and the item
13 relating to that section in the table of sections
14 for that chapter;

15 (C) by striking “60114(c), 60118(a),” in
16 section 60122(a)(1) of that chapter and insert-
17 ing “60118(a),”;

18 (D) by striking “60114(c) or” in section
19 60123(a) of that chapter;

20 (E) by striking “sections 60107 and
21 60114(b)” in subsections (a) and (b) of section
22 60125 and inserting “section 60107” in each
23 such subsection; and

1 (F) by striking subsection (d) of section
2 60125, and redesignating subsections (e) and
3 (f) of that section as subsections (d) and (e).

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